IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:	)	
	)	
Russell Bell	)	Art Unit: 2152
	)	
Serial No.: 09/357,720	)	Examiner: Thong H. Vu
	)	
Filed: July 21, 1999	)	Docket No. 60704-1870
	)	
For: System and Method for Communicating in a Point-to-Multipoint DSL Network	)	Appeal No.: _____

CERTIFICATE OF MAILING
I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents Box: Appeal Brief, Washington, D.C. 20231 on January 15, 2003.

H. Chin Barnhill
Signature – Hui Chin Barnhill

REPLY TO EXAMINER'S ANSWER

Honorable Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

This submission is in reply to the Examiner's Answer, mailed on December 31, 2002.

With the exception of paragraphs 9-13 of the Examiner's Answer, which respond to portions of Applicant's arguments, the Examiner's Answer has essentially copied and pasted the rejections from the Final Office Action. Consequently, Applicant stands behind the arguments set forth in the Appeal Brief.

As a fundamental point to Applicant's arguments, Applicant notes that the Examiner's rejections are based on 35 U.S.C. § 103, and yet they rely largely upon the Examiner's ***subjective***

(as opposed to objective) interpretation as to issues of equivalency. For example, the Examiner alleged that the use of a satellite link is equivalent to the claimed element of "directing outgoing WAN communications from any of the slave computers ..." (Examiner's Answer, paragraph 9A). In paragraph 9B of the Examiner's answer, the Examiner states that "a skkiled (*sic*) artisan would repalce (*sic*) the master bridge to server and slave bridge to client computer." However, the Examiner wholly fails to articulate a reason as to ***why*** (again relying on his subjective opinion to form the rejection). Such subjective interpretations are counter to the prevailing legal standards (as well as policies and objectives) of the Administrative Procedures Act (*see also In re Sang-Su Lee,* 277 F.3d 1339 (Fed. Cir. 2002). For at least this reason, and as more fully argued in Applicants Appeal Brief, the Examiner's rejections are misplaced and should be overturned.

As a separate and independent basis for traversing the Examiner's rejection, the Examiner has still failed to recite a proper motivation to combine the Conant and Dillon references. Indeed, in arguing against Applicant's contention that the Final Office Action failed to recite a proper motivation or suggestion for combining references, the Examiner's Answer states only:

> Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the technique of communication directly from a WAN link as taught by Dillon into Conant's apparatus in order to utilize the LAN/WAN links. ***Doing so would provide the quick, simple and efficient process to communicate between source and destination on wide are network.***

This exemplifies the Examiner's fundamental misunderstanding of the legal requirements underlying rejections under 35 U.S.C. § 103. Merely reciting a perceived benefit to a claimed combination, as the Examiner has done, is a legally insufficient basis for supporting the

allegation of a motivation to combine references. In fact, every patent claim is a novel combination of known elements. Further, every patent claim achieves some benefit (e.g., utility) over the prior art. Using the Examiner's rationale, every potential patent claim could be rejected as obvious, simply by citing disparate prior art references that independently disclose claim elements, and alleging that the combination achieves a beneficial result (e.g., faster, more efficient, cost-effective, etc.) over the prior art. In short, the legal standards applied by the Examiner would largely eviscerate the existing legal framework of 103 rejections. Applicant has set forth the requisite legal standard in the Appeal Brief, and need not repeat them here. For this separate and independent basis, the Examiner's rejections should be overturned.

For the foregoing and additional reasons set forth in the Appeal Brief, Applicant respectfully submits that the rejections of the Final Office Action should be overturned.

No fee is believed to be due in connection with this reply. If, however, any fees are required, you are hereby authorized to charge any additional fee that may be required to deposit account 20-0778.

Respectfully submitted,

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